

# ACTS

OF THE

## GENERAL ASSEMBLY

OF

## VIRGINIA,

PASSED AT THE SESSION COMMENCING DECEMBER 6, 1847, AND  
ENDING APRIL 5, 1848,

IN THE

SEVENTY-SECOND YEAR OF THE COMMONWEALTH.

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RICHMOND:

SAMUEL SHEPHERD—PRINTER TO COMMONWEALTH.

1848.

*Arrest and Commitment.*

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15. Every person who shall, in the presence of any magistrate, mentioned in the first section of this act, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered without process or any other proof, to recognize for keeping the peace, or being of good behaviour, for a term not exceeding six months, and in case of refusal may be committed as before directed.

Recognizances required for offences in presence of magistrate or court.

16. If any person shall go armed with any offensive or dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may be required to find sureties for keeping the peace for a term not exceeding twelve months, with the right of appealing as before provided.

Persons armed, required to find sureties.

Appeal allowed.

17. Such persons as are not of good fame may be required to give sufficient surety of their good behaviour for such term, not exceeding twelve months, as the magistrate requiring it may order.

Persons not of good fame to give surety.

## CHAP. XV.

## OF ARREST AND COMMITMENT.

## SECTION

1. Officers empowered to act.
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3. Offence committed in another county.
4. In what county warrant may be executed.
5. Prisoner, when to be brought before magistrate on arrest.
6. Magistrate, if he take bail, to return recognizance, &c.
7. Officer, how to proceed if prisoner not bailed.
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9. Same subject.
10. Magistrate may adjourn examination.
11. In case of default, recognizance to be certified.
12. Proceedings when party fails to recognize.
13. } Manner of conducting examination.
14. }
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16. Testimony to be reduced to writing.

## SECTION

17. When prisoner to be discharged.
18. When to be bailed or committed.
19. If party entitled to examination, &c.
20. If not so entitled, and triable on indictment, &c.
21. If party charged be free negro, &c.
22. Duty of magistrate, &c.
23. Witnesses to recognize.
24. Witnesses, when to recognize with sureties.
25. Recognizances of minors, &c.
26. Witnesses refusing to recognize.
27. Magistrate may associate others.
28. Prisoner by whom let to bail.
29. Recognizances, &c. to be returned.
30. Commitments, &c. when to be discharged.
31. Orders therefor, how to be filed &c.
32. }
33. } Proceedings on forfeited recognizances.
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36. Right of surety to surrender principal.
37. To whom to be surrendered.
38. When to the court.

1. For the apprehension of persons charged with offences, the judges of the general court, and all justices of the peace in vacation as well as in term time, are authorized to issue process to carry into effect the provisions of this act.

Process to arrest for offences, by whom issued.

2. Upon complaint made to any such magistrate that a criminal offence has been committed, he shall examine on oath the complainant and any witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been com-

Examination on complaint.

Warrant for arrest.	mitted, or there is just cause to believe that any such offence has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the said court or justice, or before some other court or magistrate of the county or corporation, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.
Summons for witnesses.	
Offence committed in another county, prisoner to be conveyed there.	3. If the offence charged in the warrant be committed in any county or corporation other than that in which the warrant shall be issued, the magistrate or court before whom the person arrested may be brought, shall by warrant commit the prisoner to the custody of the officer having him in charge, or some other officer, to be by him conveyed to the county or corporation in which the offence was committed, and there taken before some magistrate thereof, and for that purpose such officer may command the necessary aid; and the warrant with the proper return thereon, signed by the officer, shall be delivered to such magistrate, who shall proceed with the case in the same manner as if the arrest had been by virtue of a warrant originally issued by him, or if the offence charged is not punishable with death or by confinement in the penitentiary, such magistrate or court may take from the person so arrested a recognizance, with sufficient sureties for his appearance at the court having cognizance of the offence, and next to be holden in the county where it shall be alleged to have been committed, and the person arrested shall thereupon be discharged; and the magistrate or court so letting such person to bail, shall certify that fact upon the warrant, and shall cause the same, together with the recognizance taken, to be delivered without delay to the clerk of the court before which the accused was recognized to appear.
Proceedings under warrant.	
When party may be bailed and discharged.	
Return of warrant and bail to proper court.	
Where warrant may be executed.	4. If any person against whom a warrant shall be issued for an alleged offence committed within any county or corporation, shall either before or after the issuing such warrant escape from or be out of the same, the officer to whom such warrant may be directed may pursue and apprehend the party charged in any county or corporation of this state, and for that purpose may command and exercise the same authority as in his own county or corporation.
Right to be brought before magistrate where arrested.	5. In all cases where the offence charged in the warrant is not punishable with death, or by confinement in the penitentiary, if the person arrested shall request that he may be brought before a magistrate of the county or corporation in which the arrest was made, for the purpose of entering into a recognizance, without a trial or examination, the officer who made the arrest shall carry him before a magistrate of that county or corporation, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offence, and next to be holden in the county or corporation where it shall be alleged to have been committed, and the party arrested shall thereupon be liberated.
May be bailed.	
Return of recognizance and warrant.	6. The magistrate who shall so let the person arrested to bail, shall certify that fact upon the warrant, and shall deliver the same with the recognizance by him taken to the person who made the arrest, who shall cause the same to be delivered without delay to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, shall cause such witnesses as he may think necessary to be summoned to the same court.
Witnesses to be recognized.	

7. If the magistrate in the county or corporation where the arrest was made shall refuse to let to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the officer having him in charge shall take him before the magistrate who issued the warrant, or before some other magistrate of the county or corporation in which the warrant was issued, to be proceeded with as hereafter directed.

Proceedings when bail is refused.

8. When the offence charged in any warrant is punishable with death or by confinement in the penitentiary, the officer making the arrest in some other county or corporation shall convey the prisoner to the county or corporation where the warrant was issued, and he shall be proceeded with in the manner hereinafter directed.

Prisoner, when to be carried to county whence warrant issued.

9. Every person arrested by warrant for any offence where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or before some other magistrate of the same county or corporation, and the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

Where no other provision, like proceedings.

10. Any magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at any one time, without the consent of the accused, and to the same or a different place in the county, as he shall think proper; and in such case, if the party is charged with a felonious offence, he shall be committed in the mean time, otherwise he may be recognized in a sum and with securities to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

Adjournment of examination both for time and place.

Prisoner, when committed or bailed.

11. If the person so recognized shall not appear before the magistrate at the time appointed for his further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default, to the county court at its next term, and like proceedings shall be had thereon, as upon the breach of the condition of a recognizance for appearance before that court.

Breach of recognizance to be certified to court.

Proceedings thereon.

12. When such person shall fail to recognize, he may be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order, and on the day appointed he may be brought before the magistrate by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

Proceedings when party fails to recognize.

Orders of magistrates, when verbal, when written.

13. The magistrate before whom any person is brought upon a charge of having committed an offence, shall, as soon as may be, examine the complainant, and the witnesses to support the prosecution, on oath, in the presence of the party charged, touching any matters connected with such charge as may be deemed pertinent.

Manner of examination; testimony for prosecution.

14. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

Testimony for prisoner. Counsel allowed.

15. The magistrate while examining any witness, may at his discretion, exclude from the place of examination all the other witnesses; he may also, if requested, or if he think proper, direct the witnesses for or against the prisoner, to be kept separate, so that they cannot converse with each other until they shall have been examined.

Witnesses may be excluded or kept separate.

16. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think

Testimony to be reduced to writing.

- it necessary, and shall be signed by the witnesses if required by the magistrate.
- When prisoner to be discharged.** 17. If it shall appear to the magistrate upon the whole examination that no offence has been committed, or that there is not probable cause for charging the prisoner with the offence, he shall be discharged.
- When to be bailed or committed.** 18. If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty, and if the offence be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed to prison for trial or examination.
- If entitled to examining court, to be bailed or committed therefor.** 19. If the offence be one for which the party charged may be entitled to the benefit of an examining court before trial, the magistrate shall bail or commit him for examination before the next succeeding court of his county or corporation.
- If not, and triable on indictment, like proceedings therefor.** 20. If the offence be one for which the party charged may not be entitled to the benefit of an examining court, and may be tried on an indictment, the magistrate shall bail or commit him to answer any indictment which may be found against him therefor at the next court of his county or corporation in which a grand jury may be impaneled for such county or corporation.
- If party charged be a slave or free negro.** 21. If the offence be felony, and the party charged a slave, free negro or mulatto, except in the case of free negroes and mulattoes charged with felonious homicide, or any offence punishable with death, the magistrate shall bail or commit him for trial at his next succeeding county or corporation court.
- Return of magistrate where, when and how made.** 22. If the party charged be bailed or committed for examination or trial, or to answer an indictment as aforesaid, it shall be the duty of the magistrate to return to the clerk of his county or corporation court, on or before the first day of the next term thereof, a certificate stating the nature of the offence, and that the party charged was so bailed or committed therefor; and it shall be the duty of the said clerk forthwith to inform the attorney for the commonwealth in said court that such certificate had been so returned, and to exhibit it to the said court as soon as may be after it shall have been received by him.
- Clerk to inform prosecuting attorney. To exhibit return to court.**
- Witnesses to be recognized.** 23. When the prisoner is admitted to bail or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.
- When, with sureties.** 24. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance with such sureties as may be deemed necessary for his appearance at court.
- Recognizances of female covert, minors or slaves.** 25. When any married woman or minor or slave is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may in his discretion, take the recognizance of such married woman or minor, in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.
- Witnesses refusing to recognize, committed.** 26. All witnesses required to recognize either with or without sureties, shall if they refuse, be committed to jail by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

27. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more of the magistrates of the same county, and they may together execute the powers and duties before mentioned. Magistrate may associate others.

28. The circuit superior courts of law and chancery, and the county courts of the several counties, and any judge or justice thereof in vacation, on application of any prisoner committed for a bailable offence, or of any person committed for not finding sufficient securities to recognize for him, may enquire into the case and admit such prisoner or person to bail: *Provided*, That no person shall be admitted to bail by a justice of the peace in a less sum than was required by the order of commitment. Who may let to bail.

29. All examinations and recognizances taken by any magistrate, pursuant to the provisions of this act, shall be certified and returned by him to the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate shall refuse or neglect to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment as for a contempt. Examinations and recognizances to be returned to clerk of court. Magistrate compellable to make return.

30. When any person shall be committed to prison, or be under recognizance to answer to any charge of assault and battery, or other misdemeanor, for which the party injured may have a remedy by civil action, except when the offence was committed by or upon any sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may in his discretion, on payment of the costs that have accrued, discharge the recognizance, or supersede the commitment, by an order under his hand, and may also discharge all recognizances, and supersede the commitment of all witnesses in the case. Commitments when to be discharged if injured party satisfied.

31. Every such order of the magistrate discharging the recognizance of the party or witnesses, shall be filed in the office of the clerk before the sitting of the court at which they are bound to appear, and every order superseding the commitment of the party charged, or of any witness, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall for ever bar all remedy by civil action for such injury. Orders for discharge, how to be filed. Bar to civil action.

32. When any person under recognizance in any criminal prosecution, either to appear and answer or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting attorney shall direct. Process against person forfeiting recognizance.

33. Any surety in such recognizance may, by leave of the court, after default, and either before or after the process has been issued against him, pay into court the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged. Functus discharged by paying amount for which bound and costs.

34. When any action is brought on behalf of the commonwealth against a principal or surety in any recognizance, entered into either by a party or a witness, in any criminal prosecution, and the penalty of such recognizance shall be adjudged to be forfeited, the court may, on application of the party defendant, and if a county court, with the assent of the prosecuting attorney, remit any part or the whole of such penalty, and may render judgment thereon for the When and how penalty on forfeited recognizance may be remitted.

commonwealth upon such terms and conditions as shall seem just and reasonable.

What neglect or omissions no bar to action and no arrest of proceedings.

35. No such action brought on a recognizance, as mentioned in the preceding section, shall be barred or defeated, nor shall judgment thereon be arrested, by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

Right of surety to surrender principal.

36. Every surety in a recognizance shall have the same authority to take and surrender his principal, as if he had been bail for him in a civil cause, and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance.

To whom to be surrendered.

37. If the recognizance be entered into before a judge or justice of the peace, the surrender shall be made to the judge or justice before whom the same was entered into, or to some other justice of the same county, and the person so surrendered, may recognize anew, with sufficient sureties, for the residue of the term, and thereupon shall be discharged, and upon his failure so to recognize, shall be committed for the residue of the term as before directed.

When surrender may be to court.

38. If the recognizance be entered into before a court, the surrender shall be made to the court if in session, and thereupon such order shall be taken in the case as the court may deem proper, and if the court be not in session, the surrender shall be made to the sheriff, sergeant or jailor of the county or corporation, and such sheriff, sergeant or jailor shall receive such defendant and commit him to the jail of his county or corporation, and give his receipt for his body, which shall be transmitted to the clerk of the court wherein the recognizance was entered into, and the court at its next session shall take such order in the case as to it may seem proper.

When to sheriff, sergeant or jailor.

## CHAP. XVI.

### OF CORONERS' INQUESTS.

#### SECTION

1. Coroners' inquests, when to be taken.
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3. Duty of officer to whom warrant directed, &c.
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7. Testimony to be reduced to writing.

#### SECTION

8. Inquisition how taken; form thereof.
9. } Coroner's duty in case of murder,
10. } &c.
11. Coroner, when to bury the body, &c.; costs how paid.
12. Inquest may be held on Sunday.
13. Fine on coroner for neglect of duty.
14. When justice may discharge duty of coroner.
15. *Post mortem* examination.

Coroners' inquests when to be taken.

1. Coroners shall take inquests upon the view of the dead bodies of such persons only as shall be supposed to have come to their death by violence, and not when the death is believed to have been occasioned by casualty.

Coroner to issue warrant for jury.

2. As soon as any coroner shall have notice of the dead body of any person, supposed to have come to his death by violence, found or